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Attorney for Defendant City of Powell, Wyoming

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

RYAN DAVIS, an individual,	)	
	)	
Plaintiff,	)	
	)	Case No. 23-CV-230-SWS
v.	)	
	)	
THE CITY OF POWELL, WYOMING, et al.,	)	
	)	
Defendants.	)	

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**DEFENDANT’S ANSWER AND ASSERTION  
OF AFFIRMATIVE DEFENSES**

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COMES NOW Defendant<sup>1</sup> City of Powell, Wyoming (hereinafter “Defendant”), by and through its attorney, and files its Answer and Assertion of Affirmative Defenses.

1. In response to the allegations contained in paragraph 1 of Plaintiff’s Verified Complaint (hereinafter “Complaint”), the Defendant is without sufficient

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<sup>1</sup> Consistent with the Court’s recent Order Granting in Part and Denying in Part City Defendants’ Motion to Dismiss [ECF No. 18] and Order Granting Individual Defendants’ Motion to Dismiss [ECF No. 19] the only remaining Defendant is the City of Powell.

knowledge to admit or deny the allegations contained therein, and therefore denies the same.

2. In response to the allegations contained in paragraph 2 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations in the first sentence, and therefore denies the same. The remaining allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
3. In response to the allegations contained in paragraph 3 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
4. In response to the allegations contained in paragraph 4 of Plaintiff's Verified Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore denies the same.
5. In response to the allegations contained in paragraph 5 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.

6. In response to the allegations contained in paragraph 6 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore denies the same.
7. In response to the allegations contained in paragraph 7 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
8. In response to the allegations contained in paragraph 8 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
9. In response to the allegations contained in paragraph 9 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
10. In response to the allegations contained in paragraph 10 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.

11. In response to the allegations contained in paragraph 11 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
12. In response to the allegations contained in paragraph 12 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore denies the same.
13. In response to the allegations contained in paragraph 13 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
14. In response to the allegations contained in paragraph 14 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
15. In response to the allegations contained in paragraph 15 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.

16. In response to the allegations contained in paragraph 16 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
17. In response to the allegations contained in paragraph 17 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
18. In response to the allegations contained in paragraph 18 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
19. In response to the allegations contained in paragraph 19 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
20. In response to the allegations contained in paragraph 20(a)-(f) of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore denies the same.

21. In response to the allegations contained in paragraph 21 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore denies the same.
22. In response to the allegations contained in paragraph 22 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore denies the same.
23. In response to the allegations contained in paragraph 23 of Plaintiff's Complaint, the first sentence contains legal conclusions to which no response is required. To the extent a response is required, the Defendant denies the allegations contained therein. Defendant is without sufficient knowledge to admit or deny the remaining allegations contained therein, and therefore denies the same.
24. In response to the allegations contained in the first two sentences of paragraph 24 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore denies the same. Defendant admits that Plaintiff was granted leave under the FMLA although he was not qualified to receive FMLA leave. The remaining allegations contain legal conclusions to which no response is required. To the extent a response is required, the Defendant denies the allegations contained therein.

25. In response to the allegations contained in paragraph 25 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
26. In response to the allegations contained in paragraph 26 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the allegations. These allegations also relate to claims that have been dismissed by order of this Court.
27. In response to the allegations contained in paragraph 27 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
28. In response to the allegations contained in paragraph 28 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
29. In response to the allegations contained in paragraph 29 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.

30. In response to the allegations contained in paragraph 30 of Plaintiff's Complaint, the first sentence contains legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. As to the remaining sentences, Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the allegations.
31. In response to the allegations contained in paragraph 31 of Plaintiff's Complaint, the first sentence contains legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. As to the remaining sentences, Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the allegations.
32. In response to the allegations contained in paragraph 32 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the allegations.
33. In response to the allegations contained in paragraph 33 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the allegations.
34. In response to the allegations contained in paragraph 34 of Plaintiff's Complaint, Defendant admits said allegations.



35. In response to the allegations contained in paragraph 35 of Plaintiff's Complaint, Defendant admits that on or about August 21, 2021, Plaintiff received a performance evaluation. The document speaks for itself. As to the remaining allegations, Defendant is without sufficient knowledge to admit or deny the remaining allegations contained therein, and therefore denies the allegations.
36. In response to the allegations contained in paragraph 36 of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the allegations.
37. In response to the allegations contained in paragraph 37(a)-(h) of Plaintiff's Complaint, Defendant is without sufficient knowledge to admit or deny the allegations contained therein, or the allegations relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
38. In response to the allegations contained in paragraph 38 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required or relate to claims that have been dismissed by order of this Court. To the extent a response is required, the Defendant denies the allegations.
39. In response to the allegations contained in paragraphs 39-64, 74-79, and 89-106, the allegations contained therein relate to claims that have been dismissed by order of this Court and therefore no response is required. To the extent a response

is required, Defendant denies the allegations and legal conclusion contained therein.

40. In response to the allegations contained in paragraph 65 of Plaintiff's Complaint, the Defendant incorporates all its responses to paragraphs 1-64.

41. In response to the allegations contained in paragraph 66-73 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required. To the extent a response is required, the Defendant denies the allegations.

42. In response to the allegations contained in paragraph 80 of Plaintiff's Complaint, the Defendant incorporates all its responses to paragraphs 1-79.

43. In response to the allegations contained in paragraph 81-85 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required. To the extent a response is required, the Defendant denies the allegations.

44. In response to the allegations contained in paragraph 86 of Plaintiff's Complaint, the Defendant incorporates all its responses to paragraphs 1-85.

45. In response to the allegations contained in paragraph 87 of Plaintiff's Complaint, the allegations contain legal conclusions to which no response is required. To the extent a response is required, the Defendant denies the allegations.

46. In response to the allegations contained in paragraph 88 of Plaintiff's Complaint, the Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and therefore deny the allegations.

47. Defendant denies each and every other allegation not specifically admitted herein.

### **AFFIRMATIVE DEFENSES**

1. This answering Defendant asserts that the Plaintiff's Complaint fails in whole or in part to state a claim upon which relief can be granted.

2. As a further and separate defense to the Plaintiff's Complaint, the Defendant asserts that the Plaintiff, by his conduct, is estopped by his conduct to assert any of the claims or causes of action asserted therein.

3. As a further and separate defense to the Plaintiff's Complaint, the Defendant asserts that its conduct, or that of its employees, was not the proximate cause of any of the alleged damages allegedly suffered by the Plaintiff.

4. As a further and separate defense to the Plaintiff's Complaint, the Defendant asserts that the Plaintiff has failed to exhaust his administrative remedies and is therefore barred from asserting any of his claims in this cause of action.

5. As a further and separate defense to the Plaintiff's Complaint, the Defendants asserts that no act or omission of the Defendant, or its employees, was

malicious, willful, wanton, reckless or grossly negligent and, therefore, any award of punitive damages is barred.

6. As a further and separate defense to the Plaintiff's Complaint, the Defendant asserts that any State law claims asserted by the Plaintiff are barred as a matter of fact and law by the Wyoming Governmental Claims Act.

7. As a further and separate defense to the Plaintiff's Complaint, the Defendant asserts that any claim for punitive damages is barred as a matter of fact and law and is unconstitutional.

8. As a further and separate defense to the Plaintiff's Complaint, the Defendant asserts that the Plaintiff has failed to mitigate any damages the Plaintiff may have incurred or suffered as the result of any action or conduct by the Defendant.

9. As a further and separate defense to the Plaintiff's Complaint the Plaintiff has acknowledged his employment was probationary and not for cause, and therefore has waived his right to assert any of the claims or causes of actions herein.

10. Defendant reserves the right to assert additional affirmative defenses that discovery in this matter may disclose.

WHEREFORE, Defendant respectfully requests that the Plaintiff's Complaint, and the claims for relief stated therein, be dismissed with prejudice, Defendant be awarded its costs, including reasonable attorney fees, and for such other and further relief as the Court deems appropriate.

DATED this 29th day of May 2024.

/s/ Thomas A. Thompson

Thomas A. Thompson

**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically filed the foregoing with the Clerk of Court and the foregoing was served this 29th day of May 2024, by the following means:

Daniel B. Wilkerson  
Wilkerson Law Group  
[infowy@wilkersonlawgroup.com](mailto:infowy@wilkersonlawgroup.com)

[✓] E-MAIL

/s/ MaryBeth Oatsvall

Wyoming Local Government Liability Pool